

This is what has been done in the present case. It seems to me that, as held by Mr. Justice Straight and Mr. Justice Turrel, in *Badami Kuar v. Dinu Rai* (1), a material irregularity includes an irregularity of procedure materially affecting the merits of the case. The illustration which Mr. Justice Straight gives, namely, the seizure of the costs of a judgment-debtor, in some respects has a resemblance to the present case. I think that the decision of the Small Cause Court must be set aside with costs.

Attorney for Sew Bux Bogla : Baboo *N. C. Bose*.

Attorney for Bhugwan Doss : Mr. *Hart*.

T. A. P.

Rule absolute.

APPELLATE CIVIL.

Before Mr. Justice Beverley and Mr. Justice Porter.

FAZEL BISWAS AND OTHERS (PLAINTIFFS) *v.* JAMADAR SHEIK AND OTHERS (DEFENDANTS).^a

1886
June 24.

Review—Civil Procedure Code, 1882, s. 624—Application for review heard by successor to Judge who passed the decree.

Where an application for review is presented to the Judge who made the decree, and he thereupon issues notice to the other side, the application is "made" to him within the meaning of s. 624 of the Civil Procedure Code, and may be heard and disposed of by his successor in office. *Karoo Sing v. Deo Nurain Sing* (2) followed.

THIS case was originally heard by the Munsiff of Jessore who gave a decree in favor of the plaintiffs, and an appeal by the defendants from that decree to the Subordinate Judge was dismissed. The Subordinate Judge afterwards admitted an application for review of his judgment, and directed the application to be registered, and the fees for service of notice to be deposited within three days. The Subordinate Judge left before the review was heard, and it was taken up and heard by his successor, who reversed the decree, and in lieu thereof made a decree dismissing the suit. From this decision the plaintiffs appealed.

* Appeal from Appellate Decree No. 183 of 1886, against the decree of Baboo Promotho Nath Banerji, Subordinate Judge of Jessore, dated the 29th of September 1885, reversing the decree of Baboo Jodu Nath Ghose, Munsiff of Jessore, dated the 15th of December 1884.

(1) I. L. R., 8 All., 111.

(2) I. L. R., 10 Calc., 80.

1886

FAZEL
BISWASv.
JAMADAR
SHEIK.

Baboo Mohit Chunder Bose and Baboo Amarendra Nath Chatterji for the appellants.

Baboo Byddi Nath Dutt for the respondents.

The judgment of the Court (BEVERLEY and PORTER, JJ.) was as follows:—

The only point raised in this appeal is that “the Subordinate Judge has acted without jurisdiction and in contravention of the law in admitting the judgment of his predecessor into review, and in rehearing the appeal. This clearly means that the Subordinate Judge has acted in contravention of s. 624 of the Code.

Now it appears that the application for review of judgment was made, or in other words preferred, to the same Subordinate Judge who made the decree. That Subordinate Judge directed that the application should be entered on the register, and that the requisite fees for service of notice should be deposited within three days. The present case therefore seems to be precisely on all fours with that of *Karoo Sing v. Deo Narain Sing* (1) in which it was held that if the application for review is presented to the Judge who made the decree, and if he thereupon issues notice to the other side, the application has been “made” to him within the meaning of the section, and may be heard and disposed of by his successor in office.

We are not prepared to dissent from this view of the law, and we accordingly dismiss this appeal with costs.

J. V. W.

Appeal dismissed.

Before Mr. Justice Wilson and Mr. Justice Porter.

1886
July 26.

GOLAM RAHMAN (PLAINTIFF) v. FATIMA BIBI (DEFENDANT).*

*Burma Courts Act (XVII of 1875), s. 49—Restitution of Conjugal Rights—
Appeal from decree of Recorder of Rangoon—Civil Procedure Code
(Act XIV of 1882), s. 540.*

The proviso in s. 49 of the Burma Courts Act amounts to an express declaration that it is a condition precedent to the right of appeal from the Recorder's Court that the suit shall be one which has an amount or

* Appeal from Original Decree No. 374 of 1885, against the order and decree of W. F. Agnew, Esq., Recorder of Rangoon, dated respectively the 6th of February and 1st of April 1885.

(1) I. L. R., 10 Cal., 80.